

7 July 1980

MEMORANDUM FOR: Director of Central Intelligence

VIA : Deputy Director of Central Intelligence

FROM :
SA to the DCI for Compartmentation

SUBJECT : Talking Points -- Conversation with Deputy
Secretary of State re Single Community-Wide
APEX Nondisclosure Agreement

1. Ambassador Carlucci has informed me that you are concerned about the impact of the APEX Nondisclosure Agreement. This conversation is intended to answer some of your questions about it and explain why I believe that I must, to comply with the objective of PD/NSC- promulgate it. (U)

2. PD directs me, among other things, to establish UNIFORM security standards to govern access to sensitive intelligence. Consequently, NFIB collectively has agreed upon, and I have approved for publication, a single APEX Security Policy Manual for Government. It sets three requirements for access to SCI:

- Certification of need-to-know;
- Favorable investigation by strict standards;
- Security indoctrination and execution of a Nondisclosure Agreement. (S)

3. That Nondisclosure Agreement has been worked over in detail and at length by the lawyers representing the Intelligence Community and the Attorney General. In its current form, the Agreement is considered to be fair to the individual and to the Government. It provides a basis for the Government to enforce on individuals obligations to maintain secrecy.

OGC Has Reviewed

SECRET

4. Execution of such agreements is not new. Form 4066 (Non-disclosure Agreement Sensitive Compartmented Information) and predecessor agreements have been in use for years. You have signed such an agreement, perhaps several times. CIA central records show that you have access to at least eight SCI categories. Some 3,400 State employees have signed such agreements for 7,400 accesses. Programs controlled elsewhere do not appear in current CIA records, but almost certainly would enlarge this figure. Past practice required signing another copy each time a new access was approved. On the average, each State employee has signed two SCI secrecy agreements. Senior White House officials, including Dr. Brzezinski, Jody Powell and Lloyd Cutler, have similarly signed SCI secrecy agreements. (S) ✓

5. My lawyers are of the view that Form 4066 would be interpreted by the courts to support a Snapp-type action against the signer, even though the language may not clearly warn the signer of this prospect. The new agreement is fairer to the employee in that it clearly advises him or her of the requirements for secrecy and of the actions that the Government might take if the agreement is violated. The new agreement also explicitly advises the employee who wishes to speak or write publicly on how to stay out of trouble--thus, the specific guidance on review to avoid loss of royalties or prosecution. (U)

6. I am not seeking to cause unnecessary litigation nor to become a censor. The agreement as drafted attempts to minimize both roles by being explicit on what can and cannot be done following access to SCI under APEX. (U)

7. Unlike the current CIA secrecy agreement, which calls for prepublication review of any writings about the Agency or intelligence activities, the APEX agreement will require submission only of those writings which contain information related to sensitive compartmented activities or which may be based upon Sensitive Compartmented Information. Thus, the agreement will actually cover a narrow category of information and activity. It should provide no problem for State Department officers who write on issues of foreign policy and diplomacy having nothing to do with Sensitive Compartmented Information or the activities which produce such information. (U)

8. Also, please understand that the Nondisclosure Agreement does not prohibit publication of information or materials without recourse. The person who submits a manuscript for review and who believes that the Government is arbitrary in recommending deletion or modification because of security, may still go to court to have the Government defend its action. (U)

9. I believe that:

- a UNIFORM security system for SCI;
- compliance with the President's State of the Union injunction to improve security for SCI;
- and simple equity require that senior State officials sign the same Nondisclosure Agreement that must be signed by photointerpreters and cryptanalysts. (U)

I cannot see that the agreement is in any way damaging to anyone who sincerely intends to protect sensitive collection operations and the product thereof. (U)

10. I intend, therefore, to issue the Nondisclosure Agreement as it stands. In my view, it imposes nothing new, is more explicit about obligations than the existing agreement, provides more of the desired protection and is the basis for uniform rules on access. (U)

11. A copy of your memorandum to NFIB and the agreement is attached, with an extra for the Deputy Secretary. (U)

12. This memorandum was prepared jointly by OGC and the APEX Control Staff. (U)

Attachments

SA/DCI/C/[redacted] (7 July 1980)

Distribution:

Original - Addressee

- 1 - DDCI
- 1 - ER
- 1 - OGC [redacted]
- 1 - SA/DCI/C File
- 1 - SA/DCI/C Chrono

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SECRET

MEMORANDUM FOR NATIONAL FOREIGN INTELLIGENCE BOARD

SUBJECT: APEX Nondisclosure Agreement

1. This memorandum distributes for your information the uniform Nondisclosure Agreement required by paragraph 16c of the APEX Security Policy Manual as a prerequisite for access to Sensitive Compartmented Information (SCI). I recognize that this agreement does not meet the preference of all members of the Community. I have reviewed several positions, however, and I have concluded that:

- The President's injunction in his January 1980 State of the Union address that "We must tighten our controls on sensitive intelligence information," requires a strong, effective Nondisclosure Agreement under APEX.
- Substitution of APEX for past systems of compartmentation would not provide any hope of improved security without such an agreement.
- All of the provisions in this agreement are necessary to provide "legal sufficiency".
- The agreement should be executed by all persons having access to SCI, not merely a subset of intelligence-oriented employees.
- The existing systems of compartmentation have always required execution of a secrecy agreement as a prerequisite to access to SCI. The APEX Nondisclosure Agreement is not an innovation.

2. I have consequently approved the agreement. The agreement will be distributed by APEX Steering Group channels as soon as possible in order that APEX indoctrination may begin.

STANSFIELD TURNER
Chairman

Attachment:
Nondisclosure Agreement

5 June 1980 (Revised)

APEX
NONDISCLOSURE AGREEMENT

An Agreement Between _____ and the United States

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information protected within the APEX Special Access Control System, hereinafter referred to in this Agreement as Sensitive Compartmented Information. I have been advised that Sensitive Compartmented Information protected within the APEX system involves or derives from intelligence sources or methods which the Director of Central Intelligence has the responsibility to protect, and is classified or classifiable under the standards of Executive Order 12065 or other Executive order or statute. I understand and accept that by being granted access to Sensitive Compartmented Information special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of Sensitive Compartmented Information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and I understand these procedures. I understand that I may be required to sign an appropriate acknowledgment

Compartmented Information within the APEX Special Access Control System. I further understand that all my obligations under this Agreement continue to exist with respect to such categories whether or not I am required to sign such an acknowledgment.

3. I have been advised that direct or indirect unauthorized disclosure, unauthorized retention or negligent handling of Sensitive Compartmented Information by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge such information to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) which last authorized my access to Sensitive Compartmented Information. I further understand that I am obligated by law and regulation not to disclose any classified information in an unauthorized fashion.

4. In consideration of being granted access to Sensitive Compartmented Information and of being assigned or retained in a position of special confidence and trust requiring access to Sensitive Compartmented Information, I hereby agree to submit for security review by the Department or Agency which last authorized my access to such information, during the course of my access to Sensitive Compartmented Information and thereafter, all information or materials,

including works of fiction, which contain any mention of intelligence data or activities relating to Sensitive Compartmented Information or which contain data which may be based upon Sensitive Compartmented Information, that I contemplate disclosing to any person not authorized to have access to Sensitive Compartmented Information or which I have prepared for public disclosure, prior to discussing it with or showing it to anyone who is not authorized to have access to Sensitive Compartmented Information. I further agree that I will not disclose such information or materials to any person not authorized to have access to Sensitive Compartmented Information until I have received written authorization from the Department or Agency that last authorized my access to such information that such disclosure is permitted.

5. I understand that the purpose of the review described in paragraph 4 is to give the United States a reasonable opportunity to determine whether the information or materials submitted pursuant to paragraph 4 set forth any Sensitive Compartmented Information. I further understand that the Department or Agency to which I have submitted materials will act upon them, coordinating within the Intelligence Community when appropriate, and make a response to me within a reasonable time, not to exceed 30 days.

6. I have been advised that any breach of this Agreement may result in the termination of my access to Sensitive Compartmented Information and retention in a position of

special confidence and trust requiring such access, as well as the termination of my employment or other relationships with any Department or Agency which provides me with access to Sensitive Compartmented Information. In addition, I have been advised that any unauthorized disclosure of Sensitive Compartmented Information by me may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 798 and 952, Title 18, United States Code, and of Section 783(b), Title 50, United States Code. Nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

7. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I have been advised that the action can be brought against me in any of the several appropriate United States District Courts where the United States Government may elect to file the action. Court costs and reasonable attorneys fees incurred by the United States Government may be assessed against me if I lose such action.

8. I understand that all information to which I may obtain access by signing this Agreement is now and will forever remain the property of the United States Government. I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials which may have come into my possession

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or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such materials. If I do not return such materials upon request, I understand this may be a violation of Section 793, Title 18, United States Code, a United States criminal law.

9. Unless and until I am released in writing by an authorized representative of the Department or Agency which last provided me with access to Sensitive Compartmented Information, I understand that all the conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to Sensitive Compartmented Information, and at all times thereafter.

10. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement concerns Sensitive Compartmented Information and does not set forth such other conditions and obligations not related to Sensitive Compartmented Information as may now or hereafter pertain to my employment by or assignment or relationship with the Agency.

11. I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available Sections 793, 794, 798, and 952 of Title 18, United States Code, and

Section 783(b) of Title 50, United States Code, and Executive Order 12065, as amended, so that I may read them at this time, if I so choose.

12. I hereby assign to the United States Government all rights, title and interest, and all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication or revelation not consistent with the terms of this Agreement.

13. I make this Agreement without any mental reservation or purpose of evasion.

Signature

Organization

Social Security Number
(See Notice Below)

Date

The execution of this Agreement was witnessed by the undersigned who accepted it on behalf of the United States Government as a prior condition of access to Sensitive Compartmented Information.

WITNESS AND ACCEPTANCE:

Signature

Printed Name

Date

NOTICE

The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to certify that you have access to the information indicated above. While your disclosure of SSN is not mandatory, your failure to do so may delay the processing of such certification.